



PATENT
Attorney Docket No.: L0015/7000

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

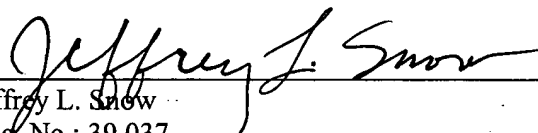
APPLICANT(S): Robert A. Levy CONF. NO. 9499
SERIAL NO.: 09/580,591 GROUP NO.: 2155
FILING DATE: May 26, 2000 EXAMINER: Michael Young Won
TITLE: SYSTEM AND METHOD FOR ANALYZING WORK ACTIVITY
AND VALUING HUMAN CAPITAL

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

In response to the Notification of Non-Compliant Appeal Brief mailed on April 25, 2006, the Applicant submits herewith an Amended Appeal Brief, filed in triplicate. The Amended Appeal Brief includes references to the specification by page and line number and to the drawings in the concise explanation of the subject matter defined in each of the independent claims involved in the appeal.

Applicant also submits a three-month extension of time with the required fee. Please apply any additional charges or credits to Deposit Account No. 50-1721, Reference No. L0015/7000.

Respectfully submitted,


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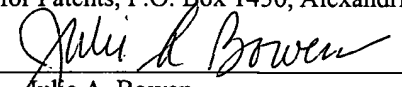
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CERTIFICATE OF FIRST CLASS MAILING UNDER 37 C.F.R. 1.8

I hereby certify that this correspondence, and any document(s) referred to as enclosed herein, is/are being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the MAIL STOP APPEAL BRIEF - PATENTS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 25th day of August, 2006.


Julie A. Bowen

MAIL STOP APPEAL BRIEF - PATENTS
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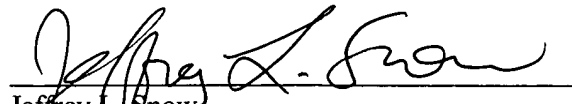
Sir:

Transmitted herewith for filing is/are the following document(s):

1. Petition for Extension of Time (in duplicate);
2. Amended Appeal Brief (in triplicate);
3. Response to Notification of Non-Compliant Appeal Brief
3. Check for \$510.00; and
4. Return Postcard

If the enclosed papers are considered incomplete, the Mail Room or other persons are respectfully requested to contact the undersigned collect at (617) 261-3100.

A check in the amount of \$510.00 is enclosed to cover the extension fee. If the fee is insufficient, the balance may be charged to Deposit Account No. 50-1721, Reference No. L0015/7000. A duplicate of this letter is enclosed for accounting purposes


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ATTORNEY'S DOCKET NO.: L0015/7000

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APPELLANT: Robert A. Levy
SERIAL NO.: 09/580,591
FILED: May 26, 2000
FOR: SYSTEM AND METHOD FOR ANALYZING WORK ACTIVITY
AND VALUING HUMAN CAPITAL
EXAMINER: Michael Young Won
ART UNIT: 2155

CERTIFICATE OF MAILING

I hereby certify that the following correspondence is being deposited with the United States Postal service as first class mail in an envelope addressed to Mail Stop Appeal Brief - Patents, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on August 25, 2006.


Julie Bowen

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**A M E N D E D
A P P E A L B R I E F**

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REAL PARTY IN INTEREST

The real party in interest is the inventor, Robert A. Levy. The invention has not been assigned.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-35 are pending in the application. All of the claims have been rejected and form the basis of this appeal.

STATUS OF AMENDMENTS

All amendments previously submitted have been entered. Now new amendments have been made.

SUMMARY OF CLAIMED SUBJECT MATTER

Applicant's invention includes systems, methods and apparatus for obtaining information about the work activities of an employee, in which the employee creates a profile of his work activities. A market value for that profile is then created. The advantage of the invention is that the actual value of the employee's job is ascertained, rather than a hypothetical value based on his title, which may not accurately reflect the work actually done by the employee.

The invention can be a system that includes a server (see, *e.g.*, specification at page 1, line 23 to page 2, line 2; page 4, lines 13-19; page 8, lines 3-21), or can be implemented on an apparatus (see, *e.g.*, page 3, line 21 to page 4, line 5; page 4, lines 6-12) that stores instructions (see, *e.g.*, page 4, lines 6-19) for a computer to carry out the invention. The employee can access a site (see page 2, lines 24-27; page 8, line 22 to page 9, line 7) and enter information about his work activities. The methods, systems and apparatus can allow

multiple employees to enter information about their work activities (page 2, lines 16-23).

The work profile (see, *e.g.*, specification at page 1, line 23 to page 2, line 2; page 2, lines 8-23; page 3, lines 9-12; page 6, lines 19-25; page 10, line 1 to page 11, line 30; Fig. 7; Fig. 9), as entered by the employee, includes the employee's individual work activities and the percentage of his time that he spends on each of the activities. The employee can select his work activities from a directory of candidate work activities (*e.g.*, page 2, line 8-10). The employee also provides a percentage of his time (page 3, lines 3-8 and 17-20; page 4, lines 20-22; page 6, lines 26-29; page 12, lines 1-11; page 16, line 3 to page 17, line 2) that he spends conducting the various work activities.

When the employee has completed his profile, a market value can be assigned to the individual employee's profile by "pricing" each of the components of the employee's job. This can be accomplished by classifying the activities by organizational level, such as managerial level (page 14, lines 3-21; page 15, line 25 to page 16, line 2), and correlating (page 6, lines 29-29; page 13, lines 9-15) related work activities into work activity groups (page 2, lines 11-15; page 14, lines 3-21 and 24-26; page 16, line 3 to page 17, line 2).

These are each treated as a separate "job part" which are valued and priced separately (see, *e.g.*, page 14, line 22 - page 15, line 2). In pricing the various parts of the employee's job, the invention can also take into account external market rates for similar work activities (page 15, lines 9-13). The job part pricing and the percentage of time the employee spends on each work activity group are aggregated across all of the work activity groups, to determine the overall market value of the *employee's actual work profile* (see, *e.g.*, page 4, lines 27-27; page 5, lines 7-9 and 11-13; page 7, lines 1-8 and 12-20; page 13, lines 9-15; page 14, line 3 to page 15, line 24; Figs. 10 and 11).

For example, Fig. 6 shows a profile for a hypothetical employee whose job title is "editor." It reveals that employee Smith spends 5% of his time managing vendors and consultants, 15% of his time preparing corporate communications, and 80% of his time preparing in-company communications. According to the

systems, methods and apparatus of the invention, Smith therefore should be paid as though he were 5% as a manager, 15% as a creator of the company's external communications, and 85% as a creator of the company's in-house communications (e.g., company newsletters).

The work profile is created by the employee, so the employee effectively defines his own job. The invention therefore provides a market salary for the employee that more accurately reflects the tasks actually done by that employee, rather than basing the employee's salary solely on his job title. The invention is therefore useful in determining if an employee's job title and salary accurately reflect the tasks actually done by the employee, and whether or not the employee is under- or overpaid.

Independent claims 1 and 11 are directed to a system for obtaining information about the work activities of an employee.

Claim 1 discloses that the system includes a server that provides a site through which the employee creates a profile of his work activities by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by group and organizational level (see, e.g., page 10, lines 13-25). The system also includes a computer used by the employee to access the site and transmit his work activities to the server (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229). The server then correlates all of the work activities of the employee into work activity groups, organizational levels, the percentages of time spent on each, and the external market rates for the work activities, and calculates a market value for the work activity profile of the employee (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Claim 11 is similar to claim 1, and discloses that the system obtains information about the work activities of a plurality of employees (see, e.g., page 7, lines 60-8; Fig. 12).

Independent claims 12 and 21 are directed to a method for obtaining information about the work activities of an employee. Both disclose that the

method includes providing a site that is accessible to the employee over the network, and creating a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by group and organizational level (see, e.g., page 10, lines 13-25).

In claim 12, a market value is calculated for the work activity profile of the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

In claim 21, the profile of work activities is analyzed by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 28 discloses an apparatus that includes a computer-readable medium that stores instructions for implementing an application to obtain information about the work activities of an employee. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, e.g., page 10, lines 13-25). The instructions calculate a market value for the work activity profile of the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational

level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 30 discloses a system for implementing an application to obtain information about the work activities of an employee. The system includes a memory which stores computer instructions, and a processor that executes the instructions. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, e.g., page 10, lines 13-25). The instructions then calculate a market value for the work activity profile of the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 32 discloses an apparatus that includes a computer-readable medium that stores instructions for implementing an application to obtain information about the work activities of an employee. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, e.g., page 10, lines 13-25). The instructions then calculate a market value for the work activity profile of

the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, *e.g.*, page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 34 discloses a system for implementing an application to obtain information about the work activities of an employee. The system includes a memory which stores computer instructions, and a processor that executes the instructions. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, *e.g.*, page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, *e.g.*, page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, *e.g.*, page 10, lines 13-25). The profile of work activities is analyzed by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, *e.g.*, page 13, line 9 to page 15, line 16; Fig. 10).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether each of claims 1-7, 11-18, 20-26 and 28-35 are anticipated by Beck *et al.* (U.S. Pat. No. 6,587,832; "Beck").
2. Whether each of claims 8-10, 19 and 27 define subject matter that, as a whole, would have been obvious to one of ordinary skill in the art in view of

the combined disclosures of Beck in view of Skinner *et al.* (U.S. Pat. No. 5,963,914; "Skinner").

ARGUMENT

1. Beck Does Not Anticipate Any of Claims 1-7, 11-18, 20-26 and 28-35 Because It Fails to Disclose the Obtaining of Information on the Work Tasks Actually Done by an Individual Employee in the Course of His Employment

Anticipation under 35 U.S.C. §102 requires that each and every limitation of the claim is disclosed in a single prior art reference, either expressly or inherently. The anticipating reference must disclose the elements in the arrangement called for by the claim. If any limitation of the claim is missing, the reference does not anticipate.

Reversal is requested of the rejection of claims 1-7, 11-18, 20-26 and 28-35 as anticipated by Beck. Beck does not disclose obtaining information on the tasks actually done by an individual employee.

Beck discloses a system and a method for obtaining and using observed market rates to estimate suitable market-based compensation for a job. Observed market rates for selected jobs are collected, and each value is assigned (1) a job family and (2) a combination of job category and responsibility level. For a given job, median market rate and average market rate are obtained for the job family, and combined through the method to produce a "job family factor" and a "responsibility level factor," which are multiplied together to produce an accurate market compensation rate for the job.

However, Beck fails to disclose or suggest a system, method or apparatus for creating a value for an individual employee's job, where the employee creates a personal profile of his job by entering (1) the tasks that he actually performs and (2) the percentage of his time spent performing them, and where the system then clusters related tasks into groups, values each group separately, and then aggregates the parts into a whole, creating a job value (*i.e.*, market salary) individualized to that particular employee.

The teachings of Beck appear to assume that the work activities of

employees are accurately reflected in their job titles. Beck does not require that an employee characterize their job in any way, and does not appear to break apart a job performed by a single individual in order to value the component parts.

Reversal of the rejection of the claims as anticipated by this reference is therefore requested.

2. Where the Skinner Reference Does Not Disclose Those Features That Are Missing From Beck, the Rejection of Claims 8-10, 19 and 27 in View of the Combination of Beck and Skinner Is Improper

Reversal is requested of the rejection of claims 8-10, 19 and 27 as defining subject matter that would have been obvious in view of the combination of Beck and Skinner. All of the claims include the requirement that an employee create a work profile of the tasks they perform, the parts of which are then valued separately and recombined to produce a value for the job as performed by the individual employee. Where neither reference discloses such a method, their combination cannot render the method obvious, and the rejection cannot be sustained.

As with the Beck reference, Skinner also does not disclose obtaining information on the tasks actually done by an individual employee and then calculating the market value of that individual employee's job. Rather, Skinner discloses a system for verifying the hours worked by employees that are working remotely.

Skinner teaches a system that tracks time spent by a person on a remote computer. As stated in the first sentence of the "Summary of the Invention" in Skinner, "[i]t is an object of a *time tracking system* provided according to the invention to produce automatic documentation and unalterable proof of work done on a computer" (col. 2, lines 43-45; emphasis added). Skinner refers to the disclosed system throughout as a "time tracking system" (e.g., col. 2, lines 43, 55, 61, 63; col. 3, lines 7, 14) to be used for "tracking of worked time" (e.g., col. 2, lines 65-66).

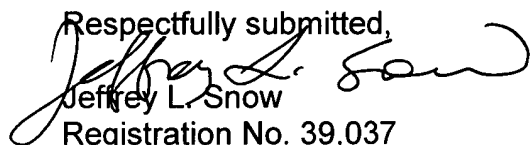
The "activities" being logged by the Skinner system are clearly network activity, electronic file activity, keyboard activity, mouse activity, and other such computer activities that can be used to prove that an employee is actually working during his time at home. These "activities" are actual times spent on various types of computer activities and are logged by the system. They are not estimates entered by the employee of the amount of time spent on various types of tasks. The purpose of the Skinner system is to provide verification of the hours employees spend actually working, especially employees who are telecommuting.

None of the references cited, either in the current or any previous office action, discloses or suggests taking apart the job of a given employee, placing a market value on each of the parts, and recombining them to provide a market value for the job as performed by *that given employee*. Rather, the references either disclose time-tracking systems (e.g., Skinner *et al.*), or provide methods of calculating market rates for predefined jobs (e.g., "Accountant," see Fig. 2 of Beck). Reversal of the rejection of the claims on the basis of these references is requested.

CONCLUSION

For the foregoing reasons, the rejection of the claims was improper and should be reversed.

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Docket No.: L0015/7000

Date: August 25, 2006

APPENDIX A

CLAIMS APPENDIX

1. (Previously presented) A system for obtaining information about the work activities of an employee, comprising:
 - a server for providing a site through which the employee creates a profile of the work activities of the employee selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and
 - a computer capable of accessing the site over a network, the employee using the computer to create the profile of the work activities of the employee and transmit the information about the work activities of the employee to the server;
 - wherein the server calculates a market value valuation for the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational levels of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.
2. (Previously presented) The system according to claim 1 wherein the server is capable of performing an analysis of the work activities of the employee based on the profile of the work activities of the employee and the calculated market value valuation.

3. (Original) The system according to claim 2 wherein the server is capable of generating a report based on the analysis.
4. (Original) The system according to claim 1 wherein the network is a network known as the Internet.
5. (Original) The system according to claim 1 further comprising a first database including work activity values for work activities of the employee in the profile.
6. (Original) The system according to claim 1 further comprising a second database including a directory of work activities used to create the profile.
7. (Original) The system according to claim 1 wherein the profile contains a plurality of groups of work activities.
8. (Original) The system according to claim 7 wherein the employee assigns a percentage of the employee's time to each group of work activities in the profile.
9. (Original) The system according to claim 8 wherein a work activities group value is calculated for each group of work activities.
10. (Previously presented) The system according to claim 9 wherein the work activities group values for the groups of work activities are weighted to calculate the market value valuation for the profile.
11. (Previously presented) A system for obtaining information about the work activities of a plurality of employees, comprising:
 - a server for providing a site through which each of the plurality of employees creates a profile of the work activities of the employee selected

from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and

at least one computer capable of accessing the site over a network, each of the plurality of employees using the computer to create the profile of the work activities of the employee and transmit information about the work activities of the employee to the server;

wherein the server calculates market values valuations for the profiles of the work activities of the plurality of employees including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employees, percentages of time allocated to the work activities of the employees, and salary rates.

12. (Previously presented) A method of obtaining information about the work activities of an employee, comprising:

providing a site accessible to the employee over a network;

creating a profile of the work activities of the employee at the site, where the work activities are selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and

calculating a market value valuation for the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within

each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.

13. (Previously presented) The method of claim 12 further comprising
generating a report based on the work activities of the employee in
the profile and the calculated market value valuation for the profile.
14. (Original) The method of claim 12 further comprising
adding work activities of the employee to the profile.
15. (Original) The method of claim 12 further comprising
deleting work activities of the employee from the profile.
16. (Original) The method of claim 12 further comprising
providing a template for the employee to create the profile.
17. (Previously presented) The method of claim 12 further comprising
converting the market value valuation for the profile to a local
geographic equivalent value.
18. (Original) The method of claim 12 further comprising
assessing a capability of the employee with respect to the work
activities in the profile.
19. (Original) The method of claim 12 further comprising
assigning a percentage of the employee's time to the work activities
in the profile.

20. (Previously presented) The method of claim 12 further comprising
weighting the working activities of the employee in the profile to
calculate the market value valuation for the profile.
21. (Previously presented) A method of obtaining information about the work
activities of an employee, comprising:
providing a site accessible to the employee over a network;
creating a profile of the work activities of the employee at the site,
wherein the work activities are selected from a directory of work activities,
each work activity in the directory being classified by work activity group
and further defined by organizational level within each work activity group;
and
analyzing the profile of the work activities of the employee including
by correlating the work activities of the employee into work activity groups,
and correlating the organizational level of the work activities performed
within each work activity group, the number of work activities performed at
each organizational level within each work activity group, the percentages
of time allocated to the aggregate work activities within each work activity
group and external market rates of the work activities within each work
activity group of the employee, percentages of time allocated to the work
activities of the employee, and salary rates.
22. (Original) The method of claim 21 further comprising
generating a report based on the work activities of the employee in
the profile.
23. (Original) The method of claim 21 further comprising
adding work activities of the employee to the profile.
24. (Original) The method of claim 21 further comprising
deleting work activities of the employee from the profile.

25. (Original) The method of claim 21 further comprising
providing a template for the employee to create the profile.
26. (Original) The method of claim 21 further comprising
assessing a capability of the employee with respect to the work
activities in the profile.
27. (Original) The method of claim 21 further comprising
assigning a percentage of the employee's time to the work activities
in the profile.
28. (Previously presented) An apparatus comprising a computer-readable
medium that stores instructions for implementing an application to obtain
information about the work activities of an employee, the instructions for
causing a computer to:
provide a site accessible to the employee over a network;
create a profile of the work activities of the employee at the site,
wherein the work activities are selected from a directory of work activities,
each work activity in the directory being classified by work activity group
and further defined by organizational level within each work activity group;
and
calculate a market value valuation for the profile of the work
activities of the employee including by correlating the work activities of the
employee into work activity groups, and correlating the organizational level
of the work activities performed within each work activity group, the
number of work activities performed at each organizational level within
each work activity group, the percentages of time allocated to the
aggregate work activities within each work activity group and external
market rates of the work activities within each work activity group of the

employee, percentages of time allocated to the work activities of the employee, and salary rates.

29. (Previously presented) The apparatus of claim 28, further comprising instructions for causing a computer to
generate a report based on the work activities of the employee in the profile and the calculated market value valuation for the profile.
30. (Previously presented) A system for implementing an application to obtain information about the work activities of an employee, comprising:
a memory which stores computer instructions; and
a processor that executes the computer instructions to:
provide a site accessible to the employee over a network;
create a profile of the work activities of the employee at the site, wherein the work activities are selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and
calculate a market value valuation for the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.
31. (Previously presented) The system of claim 30, further comprising instructions to generate a report based on the work activities of the

employee in the profile and the calculated market value valuation for the profile.

32. (Previously presented) An apparatus comprising a computer-readable medium that stores instructions for implementing an application to obtain information about the work activities of an employee, the instructions for causing a computer to:
- provide a site accessible to the employee over a network;
 - create a profile of the work activities of the employee at the site, wherein the work activities are selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and
 - analyze the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.
33. (Original) The apparatus of claim 32, further comprising instructions for causing a computer to
- generate a report based on the work activities of the employee in the profile.
34. (Previously presented) A system for implementing an application to obtain information about the work activities of an employee, comprising:
- a memory which stores computer instructions; and

a processor that executes the computer instructions to:
provide a site accessible to the employee over a network;
create a profile of the work activities of the employee at the site,
wherein the work activities are selected from a directory of work activities,
each work activity in the directory being classified by work activity group
and further defined by organizational level within each work activity group;
and

analyze the profile of the work activities of the employee including
by correlating the work activities of the employee into work activity groups,
and correlating the organizational level of the work activities performed
within each work activity group, the number of work activities performed at
each organizational level within each work activity group, the percentages
of time allocated to the aggregate work activities within each work activity
group and external market rates of the work activities within each work
activity group of the employee, percentages of time allocated to the work
activities of the employee, and salary rates.

35. (Original) The system of claim 34, further comprising instructions to
generate a report based on the work activities of the employee in the
profile.



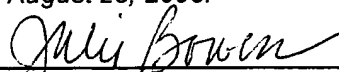
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FOR: SYSTEM AND METHOD FOR ANALYZING WORK ACTIVITY
AND VALUING HUMAN CAPITAL
EXAMINER: Michael Young Won
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CERTIFICATE OF MAILING

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**AMENDED
APPEAL BRIEF**

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REAL PARTY IN INTEREST

The real party in interest is the inventor, Robert A. Levy. The invention has not been assigned.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-35 are pending in the application. All of the claims have been rejected and form the basis of this appeal.

STATUS OF AMENDMENTS

All amendments previously submitted have been entered. Now new amendments have been made.

SUMMARY OF CLAIMED SUBJECT MATTER

Applicant's invention includes systems, methods and apparatus for obtaining information about the work activities of an employee, in which the employee creates a profile of his work activities. A market value for that profile is then created. The advantage of the invention is that the actual value of the employee's job is ascertained, rather than a hypothetical value based on his title, which may not accurately reflect the work actually done by the employee.

The invention can be a system that includes a server (see, *e.g.*, specification at page 1, line 23 to page 2, line 2; page 4, lines 13-19; page 8, lines 3-21), or can be implemented on an apparatus (see, *e.g.*, page 3, line 21 to page 4, line 5; page 4, lines 6-12) that stores instructions (see, *e.g.*, page 4, lines 6-19) for a computer to carry out the invention. The employee can access a site (see page 2, lines 24-27; page 8, line 22 to page 9, line 7) and enter information about his work activities. The methods, systems and apparatus can allow

multiple employees to enter information about their work activities (page 2, lines 16-23).

The work profile (see, e.g., specification at page 1, line 23 to page 2, line 2; page 2, lines 8-23; page 3, lines 9-12; page 6, lines 19-25; page 10, line 1 to page 11, line 30; Fig. 7; Fig. 9), as entered by the employee, includes the employee's individual work activities and the percentage of his time that he spends on each of the activities. The employee can select his work activities from a directory of candidate work activities (e.g., page 2, line 8-10). The employee also provides a percentage of his time (page 3, lines 3-8 and 17-20; page 4, lines 20-22; page 6, lines 26-29; page 12, lines 1-11; page 16, line 3 to page 17, line 2) that he spends conducting the various work activities.

When the employee has completed his profile, a market value can be assigned to the individual employee's profile by "pricing" each of the components of the employee's job. This can be accomplished by classifying the activities by organizational level, such as managerial level (page 14, lines 3-21; page 15, line 25 to page 16, line 2), and correlating (page 6, lines 29-29; page 13, lines 9-15) related work activities into work activity groups (page 2, lines 11-15; page 14, lines 3-21 and 24-26; page 16, line 3 to page 17, line 2).

These are each treated as a separate "job part" which are valued and priced separately (see, e.g., page 14, line 22 - page 15, line 2). In pricing the various parts of the employee's job, the invention can also take into account external market rates for similar work activities (page 15, lines 9-13). The job part pricing and the percentage of time the employee spends on each work activity group are aggregated across all of the work activity groups, to determine the overall market value of the *employee's actual work profile* (see, e.g., page 4, lines 27-27; page 5, lines 7-9 and 11-13; page 7, lines 1-8 and 12-20; page 13, lines 9-15; page 14, line 3 to page 15, line 24; Figs. 10 and 11).

For example, Fig. 6 shows a profile for a hypothetical employee whose job title is "editor." It reveals that employee Smith spends 5% of his time managing vendors and consultants, 15% of his time preparing corporate communications, and 80% of his time preparing in-company communications. According to the

systems, methods and apparatus of the invention, Smith therefore should be paid as though he were 5% as a manager, 15% as a creator of the company's external communications, and 85% as a creator of the company's in-house communications (e.g., company newsletters).

The work profile is created by the employee, so the employee effectively defines his own job. The invention therefore provides a market salary for the employee that more accurately reflects the tasks actually done by that employee, rather than basing the employee's salary solely on his job title. The invention is therefore useful in determining if an employee's job title and salary accurately reflect the tasks actually done by the employee, and whether or not the employee is under- or overpaid.

Independent claims 1 and 11 are directed to a system for obtaining information about the work activities of an employee.

Claim 1 discloses that the system includes a server that provides a site through which the employee creates a profile of his work activities by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by group and organizational level (see, e.g., page 10, lines 13-25). The system also includes a computer used by the employee to access the site and transmit his work activities to the server (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229). The server then correlates all of the work activities of the employee into work activity groups, organizational levels, the percentages of time spent on each, and the external market rates for the work activities, and calculates a market value for the work activity profile of the employee (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Claim 11 is similar to claim 1, and discloses that the system obtains information about the work activities of a plurality of employees (see, e.g., page 7, lines 60-8; Fig. 12).

Independent claims 12 and 21 are directed to a method for obtaining information about the work activities of an employee. Both disclose that the

method includes providing a site that is accessible to the employee over the network, and creating a profile of the work activities of the employee by selecting from a directory of work activities (see, *e.g.*, page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by group and organizational level (see, *e.g.*, page 10, lines 13-25).

In claim 12, a market value is calculated for the work activity profile of the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, *e.g.*, page 13, line 9 to page 15, line 16; Fig. 10).

In claim 21, the profile of work activities is analyzed by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, *e.g.*, page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 28 discloses an apparatus that includes a computer-readable medium that stores instructions for implementing an application to obtain information about the work activities of an employee. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, *e.g.*, page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, *e.g.*, page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, *e.g.*, page 10, lines 13-25). The instructions calculate a market value for the work activity profile of the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational

level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 30 discloses a system for implementing an application to obtain information about the work activities of an employee. The system includes a memory which stores computer instructions, and a processor that executes the instructions. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, e.g., page 10, lines 13-25). The instructions then calculate a market value for the work activity profile of the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 32 discloses an apparatus that includes a computer-readable medium that stores instructions for implementing an application to obtain information about the work activities of an employee. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, e.g., page 10, lines 13-25). The instructions then calculate a market value for the work activity profile of

the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 34 discloses a system for implementing an application to obtain information about the work activities of an employee. The system includes a memory which stores computer instructions, and a processor that executes the instructions. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, e.g., page 10, lines 13-25). The profile of work activities is analyzed by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether each of claims 1-7, 11-18, 20-26 and 28-35 are anticipated by Beck *et al.* (U.S. Pat. No. 6,587,832; "Beck").
2. Whether each of claims 8-10, 19 and 27 define subject matter that, as a whole, would have been obvious to one of ordinary skill in the art in view of

the combined disclosures of Beck in view of Skinner *et al.* (U.S. Pat. No. 5,963,914; "Skinner").

ARGUMENT

1. Beck Does Not Anticipate Any of Claims 1-7, 11-18, 20-26 and 28-35 Because It Fails to Disclose the Obtaining of Information on the Work Tasks Actually Done by an Individual Employee in the Course of His Employment

Anticipation under 35 U.S.C. §102 requires that each and every limitation of the claim is disclosed in a single prior art reference, either expressly or inherently. The anticipating reference must disclose the elements in the arrangement called for by the claim. If any limitation of the claim is missing, the reference does not anticipate.

Reversal is requested of the rejection of claims 1-7, 11-18, 20-26 and 28-35 as anticipated by Beck. Beck does not disclose obtaining information on the tasks actually done by an individual employee.

Beck discloses a system and a method for obtaining and using observed market rates to estimate suitable market-based compensation for a job. Observed market rates for selected jobs are collected, and each value is assigned (1) a job family and (2) a combination of job category and responsibility level. For a given job, median market rate and average market rate are obtained for the job family, and combined through the method to produce a "job family factor" and a "responsibility level factor," which are multiplied together to produce an accurate market compensation rate for the job.

However, Beck fails to disclose or suggest a system, method or apparatus for creating a value for an individual employee's job, where the employee creates a personal profile of his job by entering (1) the tasks that he actually performs and (2) the percentage of his time spent performing them, and where the system then clusters related tasks into groups, values each group separately, and then aggregates the parts into a whole, creating a job value (*i.e.*, market salary) individualized to that particular employee.

The teachings of Beck appear to assume that the work activities of

employees are accurately reflected in their job titles. Beck does not require that an employee characterize their job in any way, and does not appear to break apart a job performed by a single individual in order to value the component parts.

Reversal of the rejection of the claims as anticipated by this reference is therefore requested.

2. Where the Skinner Reference Does Not Disclose Those Features That Are Missing From Beck, the Rejection of Claims 8-10, 19 and 27 in View of the Combination of Beck and Skinner Is Improper

Reversal is requested of the rejection of claims 8-10, 19 and 27 as defining subject matter that would have been obvious in view of the combination of Beck and Skinner. All of the claims include the requirement that an employee create a work profile of the tasks they perform, the parts of which are then valued separately and recombined to produce a value for the job as performed by the individual employee. Where neither reference discloses such a method, their combination cannot render the method obvious, and the rejection cannot be sustained.

As with the Beck reference, Skinner also does not disclose obtaining information on the tasks actually done by an individual employee and then calculating the market value of that individual employee's job. Rather, Skinner discloses a system for verifying the hours worked by employees that are working remotely.

Skinner teaches a system that tracks time spent by a person on a remote computer. As stated in the first sentence of the "Summary of the Invention" in Skinner, "[i]t is an object of a *time tracking system* provided according to the invention to produce automatic documentation and unalterable proof of work done on a computer" (col. 2, lines 43-45; emphasis added). Skinner refers to the disclosed system throughout as a "time tracking system" (e.g., col. 2, lines 43, 55, 61, 63; col. 3, lines 7, 14) to be used for "tracking of worked time" (e.g., col. 2, lines 65-66).

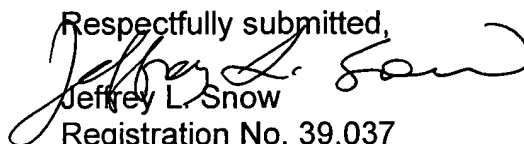
The "activities" being logged by the Skinner system are clearly network activity, electronic file activity, keyboard activity, mouse activity, and other such computer activities that can be used to prove that an employee is actually working during his time at home. These "activities" are actual times spent on various types of computer activities and are logged by the system. They are not estimates entered by the employee of the amount of time spent on various types of tasks. The purpose of the Skinner system is to provide verification of the hours employees spend actually working, especially employees who are telecommuting.

None of the references cited, either in the current or any previous office action, discloses or suggests taking apart the job of a given employee, placing a market value on each of the parts, and recombining them to provide a market value for the job as performed by *that given employee*. Rather, the references either disclose time-tracking systems (e.g., Skinner *et al.*), or provide methods of calculating market rates for predefined jobs (e.g., "Accountant," see Fig. 2 of Beck). Reversal of the rejection of the claims on the basis of these references is requested.

CONCLUSION

For the foregoing reasons, the rejection of the claims was improper and should be reversed.

Respectfully submitted,



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APPENDIX A

CLAIMS APPENDIX

1. (Previously presented) A system for obtaining information about the work activities of an employee, comprising:
 - a server for providing a site through which the employee creates a profile of the work activities of the employee selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and
 - a computer capable of accessing the site over a network, the employee using the computer to create the profile of the work activities of the employee and transmit the information about the work activities of the employee to the server;
 - wherein the server calculates a market value valuation for the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational levels of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.
2. (Previously presented) The system according to claim 1 wherein the server is capable of performing an analysis of the work activities of the employee based on the profile of the work activities of the employee and the calculated market value valuation.

3. (Original) The system according to claim 2 wherein the server is capable of generating a report based on the analysis.
4. (Original) The system according to claim 1 wherein the network is a network known as the Internet.
5. (Original) The system according to claim 1 further comprising a first database including work activity values for work activities of the employee in the profile.
6. (Original) The system according to claim 1 further comprising a second database including a directory of work activities used to create the profile.
7. (Original) The system according to claim 1 wherein the profile contains a plurality of groups of work activities.
8. (Original) The system according to claim 7 wherein the employee assigns a percentage of the employee's time to each group of work activities in the profile.
9. (Original) The system according to claim 8 wherein a work activities group value is calculated for each group of work activities.
10. (Previously presented) The system according to claim 9 wherein the work activities group values for the groups of work activities are weighted to calculate the market value valuation for the profile.
11. (Previously presented) A system for obtaining information about the work activities of a plurality of employees, comprising:
 - a server for providing a site through which each of the plurality of employees creates a profile of the work activities of the employee selected

from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and

at least one computer capable of accessing the site over a network, each of the plurality of employees using the computer to create the profile of the work activities of the employee and transmit information about the work activities of the employee to the server;

wherein the server calculates market values valuations for the profiles of the work activities of the plurality of employees including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employees, percentages of time allocated to the work activities of the employees, and salary rates.

12. (Previously presented) A method of obtaining information about the work activities of an employee, comprising:

providing a site accessible to the employee over a network;

creating a profile of the work activities of the employee at the site, where the work activities are selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and

calculating a market value valuation for the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within

each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.

13. (Previously presented) The method of claim 12 further comprising
generating a report based on the work activities of the employee in
the profile and the calculated market value valuation for the profile.
14. (Original) The method of claim 12 further comprising
adding work activities of the employee to the profile.
15. (Original) The method of claim 12 further comprising
deleting work activities of the employee from the profile.
16. (Original) The method of claim 12 further comprising
providing a template for the employee to create the profile.
17. (Previously presented) The method of claim 12 further comprising
converting the market value valuation for the profile to a local
geographic equivalent value.
18. (Original) The method of claim 12 further comprising
assessing a capability of the employee with respect to the work
activities in the profile.
19. (Original) The method of claim 12 further comprising
assigning a percentage of the employee's time to the work activities
in the profile.

20. (Previously presented) The method of claim 12 further comprising
weighting the working activities of the employee in the profile to
calculate the market value valuation for the profile.
21. (Previously presented) A method of obtaining information about the work
activities of an employee, comprising:
providing a site accessible to the employee over a network;
creating a profile of the work activities of the employee at the site,
wherein the work activities are selected from a directory of work activities,
each work activity in the directory being classified by work activity group
and further defined by organizational level within each work activity group;
and
analyzing the profile of the work activities of the employee including
by correlating the work activities of the employee into work activity groups,
and correlating the organizational level of the work activities performed
within each work activity group, the number of work activities performed at
each organizational level within each work activity group, the percentages
of time allocated to the aggregate work activities within each work activity
group and external market rates of the work activities within each work
activity group of the employee, percentages of time allocated to the work
activities of the employee, and salary rates.
22. (Original) The method of claim 21 further comprising
generating a report based on the work activities of the employee in
the profile.
23. (Original) The method of claim 21 further comprising
adding work activities of the employee to the profile.
24. (Original) The method of claim 21 further comprising
deleting work activities of the employee from the profile.

25. (Original) The method of claim 21 further comprising
providing a template for the employee to create the profile.
26. (Original) The method of claim 21 further comprising
assessing a capability of the employee with respect to the work
activities in the profile.
27. (Original) The method of claim 21 further comprising
assigning a percentage of the employee's time to the work activities
in the profile.
28. (Previously presented) An apparatus comprising a computer-readable
medium that stores instructions for implementing an application to obtain
information about the work activities of an employee, the instructions for
causing a computer to:
provide a site accessible to the employee over a network;
create a profile of the work activities of the employee at the site,
wherein the work activities are selected from a directory of work activities,
each work activity in the directory being classified by work activity group
and further defined by organizational level within each work activity group;
and
calculate a market value valuation for the profile of the work
activities of the employee including by correlating the work activities of the
employee into work activity groups, and correlating the organizational level
of the work activities performed within each work activity group, the
number of work activities performed at each organizational level within
each work activity group, the percentages of time allocated to the
aggregate work activities within each work activity group and external
market rates of the work activities within each work activity group of the

employee, percentages of time allocated to the work activities of the employee, and salary rates.

29. (Previously presented) The apparatus of claim 28, further comprising instructions for causing a computer to
generate a report based on the work activities of the employee in the profile and the calculated market value valuation for the profile.
30. (Previously presented) A system for implementing an application to obtain information about the work activities of an employee, comprising:
a memory which stores computer instructions; and
a processor that executes the computer instructions to:
provide a site accessible to the employee over a network;
create a profile of the work activities of the employee at the site,
wherein the work activities are selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group;
and
calculate a market value valuation for the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.
31. (Previously presented) The system of claim 30, further comprising instructions to generate a report based on the work activities of the

employee in the profile and the calculated market value valuation for the profile.

32. (Previously presented) An apparatus comprising a computer-readable medium that stores instructions for implementing an application to obtain information about the work activities of an employee, the instructions for causing a computer to:
- provide a site accessible to the employee over a network;
 - create a profile of the work activities of the employee at the site, wherein the work activities are selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and
 - analyze the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.
33. (Original) The apparatus of claim 32, further comprising instructions for causing a computer to
- generate a report based on the work activities of the employee in the profile.
34. (Previously presented) A system for implementing an application to obtain information about the work activities of an employee, comprising:
- a memory which stores computer instructions; and

a processor that executes the computer instructions to:
provide a site accessible to the employee over a network;
create a profile of the work activities of the employee at the site,
wherein the work activities are selected from a directory of work activities,
each work activity in the directory being classified by work activity group
and further defined by organizational level within each work activity group;
and

analyze the profile of the work activities of the employee including
by correlating the work activities of the employee into work activity groups,
and correlating the organizational level of the work activities performed
within each work activity group, the number of work activities performed at
each organizational level within each work activity group, the percentages
of time allocated to the aggregate work activities within each work activity
group and external market rates of the work activities within each work
activity group of the employee, percentages of time allocated to the work
activities of the employee, and salary rates.

35. (Original) The system of claim 34, further comprising instructions to
generate a report based on the work activities of the employee in the
profile.




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FOR: SYSTEM AND METHOD FOR ANALYZING WORK ACTIVITY
AND VALUING HUMAN CAPITAL
EXAMINER: Michael Young Won
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Julie Bowen

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**AMENDED
APPEAL BRIEF**

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REAL PARTY IN INTEREST

The real party in interest is the inventor, Robert A. Levy. The invention has not been assigned.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-35 are pending in the application. All of the claims have been rejected and form the basis of this appeal.

STATUS OF AMENDMENTS

All amendments previously submitted have been entered. Now new amendments have been made.

SUMMARY OF CLAIMED SUBJECT MATTER

Applicant's invention includes systems, methods and apparatus for obtaining information about the work activities of an employee, in which the employee creates a profile of his work activities. A market value for that profile is then created. The advantage of the invention is that the actual value of the employee's job is ascertained, rather than a hypothetical value based on his title, which may not accurately reflect the work actually done by the employee.

The invention can be a system that includes a server (see, *e.g.*, specification at page 1, line 23 to page 2, line 2; page 4, lines 13-19; page 8, lines 3-21), or can be implemented on an apparatus (see, *e.g.*, page 3, line 21 to page 4, line 5; page 4, lines 6-12) that stores instructions (see, *e.g.*, page 4, lines 6-19) for a computer to carry out the invention. The employee can access a site (see page 2, lines 24-27; page 8, line 22 to page 9, line 7) and enter information about his work activities. The methods, systems and apparatus can allow

multiple employees to enter information about their work activities (page 2, lines 16-23).

The work profile (see, e.g., specification at page 1, line 23 to page 2, line 2; page 2, lines 8-23; page 3, lines 9-12; page 6, lines 19-25; page 10, line 1 to page 11, line 30; Fig. 7; Fig. 9), as entered by the employee, includes the employee's individual work activities and the percentage of his time that he spends on each of the activities. The employee can select his work activities from a directory of candidate work activities (e.g., page 2, line 8-10). The employee also provides a percentage of his time (page 3, lines 3-8 and 17-20; page 4, lines 20-22; page 6, lines 26-29; page 12, lines 1-11; page 16, line 3 to page 17, line 2) that he spends conducting the various work activities.

When the employee has completed his profile, a market value can be assigned to the individual employee's profile by "pricing" each of the components of the employee's job. This can be accomplished by classifying the activities by organizational level, such as managerial level (page 14, lines 3-21; page 15, line 25 to page 16, line 2), and correlating (page 6, lines 29-29; page 13, lines 9-15) related work activities into work activity groups (page 2, lines 11-15; page 14, lines 3-21 and 24-26; page 16, line 3 to page 17, line 2).

These are each treated as a separate "job part" which are valued and priced separately (see, e.g., page 14, line 22 - page 15, line 2). In pricing the various parts of the employee's job, the invention can also take into account external market rates for similar work activities (page 15, lines 9-13). The job part pricing and the percentage of time the employee spends on each work activity group are aggregated across all of the work activity groups, to determine the overall market value of the *employee's actual work profile* (see, e.g., page 4, lines 27-27; page 5, lines 7-9 and 11-13; page 7, lines 1-8 and 12-20; page 13, lines 9-15; page 14, line 3 to page 15, line 24; Figs. 10 and 11).

For example, Fig. 6 shows a profile for a hypothetical employee whose job title is "editor." It reveals that employee Smith spends 5% of his time managing vendors and consultants, 15% of his time preparing corporate communications, and 80% of his time preparing in-company communications. According to the

systems, methods and apparatus of the invention, Smith therefore should be paid as though he were 5% as a manager, 15% as a creator of the company's external communications, and 85% as a creator of the company's in-house communications (e.g., company newsletters).

The work profile is created by the employee, so the employee effectively defines his own job. The invention therefore provides a market salary for the employee that more accurately reflects the tasks actually done by that employee, rather than basing the employee's salary solely on his job title. The invention is therefore useful in determining if an employee's job title and salary accurately reflect the tasks actually done by the employee, and whether or not the employee is under- or overpaid.

Independent claims 1 and 11 are directed to a system for obtaining information about the work activities of an employee.

Claim 1 discloses that the system includes a server that provides a site through which the employee creates a profile of his work activities by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by group and organizational level (see, e.g., page 10, lines 13-25). The system also includes a computer used by the employee to access the site and transmit his work activities to the server (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229). The server then correlates all of the work activities of the employee into work activity groups, organizational levels, the percentages of time spent on each, and the external market rates for the work activities, and calculates a market value for the work activity profile of the employee (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Claim 11 is similar to claim 1, and discloses that the system obtains information about the work activities of a plurality of employees (see, e.g., page 7, lines 60-8; Fig. 12).

Independent claims 12 and 21 are directed to a method for obtaining information about the work activities of an employee. Both disclose that the

method includes providing a site that is accessible to the employee over the network, and creating a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by group and organizational level (see, e.g., page 10, lines 13-25).

In claim 12, a market value is calculated for the work activity profile of the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

In claim 21, the profile of work activities is analyzed by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 28 discloses an apparatus that includes a computer-readable medium that stores instructions for implementing an application to obtain information about the work activities of an employee. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, e.g., page 10, lines 13-25). The instructions calculate a market value for the work activity profile of the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational

level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 30 discloses a system for implementing an application to obtain information about the work activities of an employee. The system includes a memory which stores computer instructions, and a processor that executes the instructions. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, e.g., page 10, lines 13-25). The instructions then calculate a market value for the work activity profile of the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 32 discloses an apparatus that includes a computer-readable medium that stores instructions for implementing an application to obtain information about the work activities of an employee. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, e.g., page 10, lines 13-25). The instructions then calculate a market value for the work activity profile of

the employee by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

Independent claim 34 discloses a system for implementing an application to obtain information about the work activities of an employee. The system includes a memory which stores computer instructions, and a processor that executes the instructions. The instructions cause a computer to provide a site that is accessible to the employee over a network (see, e.g., page 7, line 28 to page 8, line 2; Fig. 2 ref. 229), and create a profile of the work activities of the employee by selecting from a directory of work activities (see, e.g., page 7, line 28 to page 8, line 17; page 10, lines 18-29; Figs. 2 & 3 refs. 130 & 140), which are classified by work activity group and organizational level within each work activity group (see, e.g., page 10, lines 13-25). The profile of work activities is analyzed by correlating the work activities of the employee into work activity groups, correlating the organizational levels of the work activities in each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group, and the external market rates for the work activities within each work activity group (see, e.g., page 13, line 9 to page 15, line 16; Fig. 10).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether each of claims 1-7, 11-18, 20-26 and 28-35 are anticipated by Beck *et al.* (U.S. Pat. No. 6,587,832; "Beck").
2. Whether each of claims 8-10, 19 and 27 define subject matter that, as a whole, would have been obvious to one of ordinary skill in the art in view of

the combined disclosures of Beck in view of Skinner *et al.* (U.S. Pat. No. 5,963,914; "Skinner").

ARGUMENT

1. Beck Does Not Anticipate Any of Claims 1-7, 11-18, 20-26 and 28-35 Because It Fails to Disclose the Obtaining of Information on the Work Tasks Actually Done by an Individual Employee in the Course of His Employment

Anticipation under 35 U.S.C. §102 requires that each and every limitation of the claim is disclosed in a single prior art reference, either expressly or inherently. The anticipating reference must disclose the elements in the arrangement called for by the claim. If any limitation of the claim is missing, the reference does not anticipate.

Reversal is requested of the rejection of claims 1-7, 11-18, 20-26 and 28-35 as anticipated by Beck. Beck does not disclose obtaining information on the tasks actually done by an individual employee.

Beck discloses a system and a method for obtaining and using observed market rates to estimate suitable market-based compensation for a job. Observed market rates for selected jobs are collected, and each value is assigned (1) a job family and (2) a combination of job category and responsibility level. For a given job, median market rate and average market rate are obtained for the job family, and combined through the method to produce a "job family factor" and a "responsibility level factor," which are multiplied together to produce an accurate market compensation rate for the job.

However, Beck fails to disclose or suggest a system, method or apparatus for creating a value for an individual employee's job, where the employee creates a personal profile of his job by entering (1) the tasks that he actually performs and (2) the percentage of his time spent performing them, and where the system then clusters related tasks into groups, values each group separately, and then aggregates the parts into a whole, creating a job value (*i.e.*, market salary) individualized to that particular employee.

The teachings of Beck appear to assume that the work activities of

employees are accurately reflected in their job titles. Beck does not require that an employee characterize their job in any way, and does not appear to break apart a job performed by a single individual in order to value the component parts.

Reversal of the rejection of the claims as anticipated by this reference is therefore requested.

2. Where the Skinner Reference Does Not Disclose Those Features That Are Missing From Beck, the Rejection of Claims 8-10, 19 and 27 in View of the Combination of Beck and Skinner Is Improper

Reversal is requested of the rejection of claims 8-10, 19 and 27 as defining subject matter that would have been obvious in view of the combination of Beck and Skinner. All of the claims include the requirement that an employee create a work profile of the tasks they perform, the parts of which are then valued separately and recombined to produce a value for the job as performed by the individual employee. Where neither reference discloses such a method, their combination cannot render the method obvious, and the rejection cannot be sustained.

As with the Beck reference, Skinner also does not disclose obtaining information on the tasks actually done by an individual employee and then calculating the market value of that individual employee's job. Rather, Skinner discloses a system for verifying the hours worked by employees that are working remotely.

Skinner teaches a system that tracks time spent by a person on a remote computer. As stated in the first sentence of the "Summary of the Invention" in Skinner, "[i]t is an object of a *time tracking system* provided according to the invention to produce automatic documentation and unalterable proof of work done on a computer" (col. 2, lines 43-45; emphasis added). Skinner refers to the disclosed system throughout as a "time tracking system" (e.g., col. 2, lines 43, 55, 61, 63; col. 3, lines 7, 14) to be used for "tracking of worked time" (e.g., col. 2, lines 65-66).

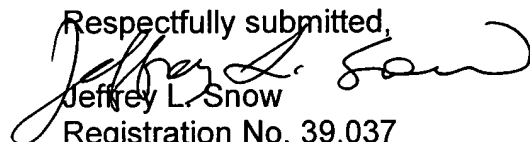
The "activities" being logged by the Skinner system are clearly network activity, electronic file activity, keyboard activity, mouse activity, and other such computer activities that can be used to prove that an employee is actually working during his time at home. These "activities" are actual times spent on various types of computer activities and are logged by the system. They are not estimates entered by the employee of the amount of time spent on various types of tasks. The purpose of the Skinner system is to provide verification of the hours employees spend actually working, especially employees who are telecommuting.

None of the references cited, either in the current or any previous office action, discloses or suggests taking apart the job of a given employee, placing a market value on each of the parts, and recombining them to provide a market value for the job as performed by *that given employee*. Rather, the references either disclose time-tracking systems (e.g., Skinner *et al.*), or provide methods of calculating market rates for predefined jobs (e.g., "Accountant," see Fig. 2 of Beck). Reversal of the rejection of the claims on the basis of these references is requested.

CONCLUSION

For the foregoing reasons, the rejection of the claims was improper and should be reversed.

Respectfully submitted,



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APPENDIX A

CLAIMS APPENDIX

1. (Previously presented) A system for obtaining information about the work activities of an employee, comprising:
 - a server for providing a site through which the employee creates a profile of the work activities of the employee selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and
 - a computer capable of accessing the site over a network, the employee using the computer to create the profile of the work activities of the employee and transmit the information about the work activities of the employee to the server;
 - wherein the server calculates a market value valuation for the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational levels of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.
2. (Previously presented) The system according to claim 1 wherein the server is capable of performing an analysis of the work activities of the employee based on the profile of the work activities of the employee and the calculated market value valuation.

3. (Original) The system according to claim 2 wherein the server is capable of generating a report based on the analysis.
4. (Original) The system according to claim 1 wherein the network is a network known as the Internet.
5. (Original) The system according to claim 1 further comprising a first database including work activity values for work activities of the employee in the profile.
6. (Original) The system according to claim 1 further comprising a second database including a directory of work activities used to create the profile.
7. (Original) The system according to claim 1 wherein the profile contains a plurality of groups of work activities.
8. (Original) The system according to claim 7 wherein the employee assigns a percentage of the employee's time to each group of work activities in the profile.
9. (Original) The system according to claim 8 wherein a work activities group value is calculated for each group of work activities.
10. (Previously presented) The system according to claim 9 wherein the work activities group values for the groups of work activities are weighted to calculate the market value valuation for the profile.
11. (Previously presented) A system for obtaining information about the work activities of a plurality of employees, comprising:
 - a server for providing a site through which each of the plurality of employees creates a profile of the work activities of the employee selected

from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and

at least one computer capable of accessing the site over a network, each of the plurality of employees using the computer to create the profile of the work activities of the employee and transmit information about the work activities of the employee to the server;

wherein the server calculates market values valuations for the profiles of the work activities of the plurality of employees including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employees, percentages of time allocated to the work activities of the employees, and salary rates.

12. (Previously presented) A method of obtaining information about the work activities of an employee, comprising:

providing a site accessible to the employee over a network;

creating a profile of the work activities of the employee at the site, where the work activities are selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and

calculating a market value valuation for the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within

each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.

13. (Previously presented) The method of claim 12 further comprising generating a report based on the work activities of the employee in the profile and the calculated market value valuation for the profile.
14. (Original) The method of claim 12 further comprising adding work activities of the employee to the profile.
15. (Original) The method of claim 12 further comprising deleting work activities of the employee from the profile.
16. (Original) The method of claim 12 further comprising providing a template for the employee to create the profile.
17. (Previously presented) The method of claim 12 further comprising converting the market value valuation for the profile to a local geographic equivalent value.
18. (Original) The method of claim 12 further comprising assessing a capability of the employee with respect to the work activities in the profile.
19. (Original) The method of claim 12 further comprising assigning a percentage of the employee's time to the work activities in the profile.

20. (Previously presented) The method of claim 12 further comprising
weighting the working activities of the employee in the profile to
calculate the market value valuation for the profile.
21. (Previously presented) A method of obtaining information about the work
activities of an employee, comprising:
providing a site accessible to the employee over a network;
creating a profile of the work activities of the employee at the site,
wherein the work activities are selected from a directory of work activities,
each work activity in the directory being classified by work activity group
and further defined by organizational level within each work activity group;
and
analyzing the profile of the work activities of the employee including
by correlating the work activities of the employee into work activity groups,
and correlating the organizational level of the work activities performed
within each work activity group, the number of work activities performed at
each organizational level within each work activity group, the percentages
of time allocated to the aggregate work activities within each work activity
group and external market rates of the work activities within each work
activity group of the employee, percentages of time allocated to the work
activities of the employee, and salary rates.
22. (Original) The method of claim 21 further comprising
generating a report based on the work activities of the employee in
the profile.
23. (Original) The method of claim 21 further comprising
adding work activities of the employee to the profile.
24. (Original) The method of claim 21 further comprising
deleting work activities of the employee from the profile.

25. (Original) The method of claim 21 further comprising
providing a template for the employee to create the profile.
26. (Original) The method of claim 21 further comprising
assessing a capability of the employee with respect to the work
activities in the profile.
27. (Original) The method of claim 21 further comprising
assigning a percentage of the employee's time to the work activities
in the profile.
28. (Previously presented) An apparatus comprising a computer-readable
medium that stores instructions for implementing an application to obtain
information about the work activities of an employee, the instructions for
causing a computer to:
provide a site accessible to the employee over a network;
create a profile of the work activities of the employee at the site,
wherein the work activities are selected from a directory of work activities,
each work activity in the directory being classified by work activity group
and further defined by organizational level within each work activity group;
and
calculate a market value valuation for the profile of the work
activities of the employee including by correlating the work activities of the
employee into work activity groups, and correlating the organizational level
of the work activities performed within each work activity group, the
number of work activities performed at each organizational level within
each work activity group, the percentages of time allocated to the
aggregate work activities within each work activity group and external
market rates of the work activities within each work activity group of the

employee, percentages of time allocated to the work activities of the employee, and salary rates.

29. (Previously presented) The apparatus of claim 28, further comprising instructions for causing a computer to
generate a report based on the work activities of the employee in the profile and the calculated market value valuation for the profile.
30. (Previously presented) A system for implementing an application to obtain information about the work activities of an employee, comprising:
 - a memory which stores computer instructions; and
 - a processor that executes the computer instructions to:
 - provide a site accessible to the employee over a network;
 - create a profile of the work activities of the employee at the site,wherein the work activities are selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and
 - calculate a market value valuation for the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.
31. (Previously presented) The system of claim 30, further comprising instructions to generate a report based on the work activities of the

employee in the profile and the calculated market value valuation for the profile.

32. (Previously presented) An apparatus comprising a computer-readable medium that stores instructions for implementing an application to obtain information about the work activities of an employee, the instructions for causing a computer to:
 - provide a site accessible to the employee over a network;
 - create a profile of the work activities of the employee at the site, wherein the work activities are selected from a directory of work activities, each work activity in the directory being classified by work activity group and further defined by organizational level within each work activity group; and
 - analyze the profile of the work activities of the employee including by correlating the work activities of the employee into work activity groups, and correlating the organizational level of the work activities performed within each work activity group, the number of work activities performed at each organizational level within each work activity group, the percentages of time allocated to the aggregate work activities within each work activity group and external market rates of the work activities within each work activity group of the employee, percentages of time allocated to the work activities of the employee, and salary rates.
33. (Original) The apparatus of claim 32, further comprising instructions for causing a computer to
 - generate a report based on the work activities of the employee in the profile.
34. (Previously presented) A system for implementing an application to obtain information about the work activities of an employee, comprising:
 - a memory which stores computer instructions; and

a processor that executes the computer instructions to:
provide a site accessible to the employee over a network;
create a profile of the work activities of the employee at the site,
wherein the work activities are selected from a directory of work activities,
each work activity in the directory being classified by work activity group
and further defined by organizational level within each work activity group;
and

analyze the profile of the work activities of the employee including
by correlating the work activities of the employee into work activity groups,
and correlating the organizational level of the work activities performed
within each work activity group, the number of work activities performed at
each organizational level within each work activity group, the percentages
of time allocated to the aggregate work activities within each work activity
group and external market rates of the work activities within each work
activity group of the employee, percentages of time allocated to the work
activities of the employee, and salary rates.

35. (Original) The system of claim 34, further comprising instructions to
generate a report based on the work activities of the employee in the
profile.